

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**ARIA RESORT & CASINO, LLC d/b/a ARIA**

**Employer**

**and**

**Case 28-RC-154093**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 501, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Union of Operating Engineers, Local 501, AFL-CIO (the Petitioner) seeks to represent a unit of all full-time and part-time tram operators employed by Aria Resort & Casino, LLC d/b/a Aria (the Employer) at its Las Vegas, Nevada facility. The Employer asserts that the petition does not satisfy the mandatory obligations in Section 102.61(a)(8) of the Board's Rules and Regulations.<sup>1</sup> The parties do not agree on a date for an election, as the Petitioner requested June 26, 2015, while the Employer requested July 7 or 8, 2015, based on the number of employees working on those dates.

A hearing officer of the Board held a pre-election hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As described below, based on the record and relevant Board case, including the Board's decision in *Advance Pattern Co.*, 80 NLRB 29 (1948), I find that the petition is sufficient.

**The Employer's Operations**

The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act. The Employer is a Nevada corporation with offices and place of business in Las Vegas, Nevada, which is the only operation involved herein, where it operates a casino and hotel, and provides convention and meeting spaces, restaurant services, entertainment services, and other amusement services.

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<sup>1</sup> A petition for certification when filed by an employee or group of employees or an individual or labor organization acting in their behalf, shall contain the following: [a] statement that the employer declines to recognize the petitioner as the representative within the meaning of section 9(a) of the Act or that the labor organization is currently recognized but desires certification under the Act.

The petitioned-for unit is comprised of six employees whose job assignment is limited to operating the tram at the Employer's facility. At hearing, the parties agreed to the description for and the appropriateness of the petitioned-for unit.

At hearing, the Employer again raised its objection to the pre-election hearing and petition for the reasons expressed in its Motion to Dismiss filed on June 16, 2015. It averred that it never argued that the Petitioner must request recognition before it could file a petition, and that its argument was limited to the sufficiency of the petition itself. The Employer's Motion to Dismiss reads otherwise.<sup>2</sup> The Employer argues that the petition fails to state whether the Petitioner requested recognition before filing its petition, asserting that this is a requirement pursuant to Section 102.61(a)(8) of the Board's Rules and Regulations and Section 7(a) on Form NLRB-502(RC) (RC Petition). As explained in the Order Denying Employer's Motion to Dismiss Petition (Order) on June 19, 2015, there was no merit to the Employer's arguments that the Petitioner failed to comply with the requirements in the Board's Rules and Regulations or that the filing of the petition was contingent on the Petitioner making an offer of recognition to the Employer.

Section 102.61(a), which addresses petitions for certifications, does not impose any condition requiring a petitioner to demand recognition from the Employer under Section 9(a) of the National Labor Relations Act (the Act) before filing a petition for certification. Similarly, Section 102.61(a)(8), which describes the contents that must accompany a petition for certification at the time of service, does not impose this demand for recognition requirement. Although the Employer asserts that the petitioner must demand recognition under these rules, Section 102.61(a)(8) simply does not support this argument. Rather, Section 102.61(a)(8) describes that the petition for certification form provides a section for the petitioner to note one of two scenarios: (a) whether a request for recognition has been made and whether the employer declined to recognize the petitioner as a representative under Section 9(a) of the Act, or (b) whether the petitioner is currently recognized but desires certification. There is nothing on the form stating that the request for recognition action is a condition precedent for filing a valid petition. Moreover, each of the Employer's arguments is contrary to Board law. *Advance Pattern Co.*, 80 NLRB 29, 31-38 (1948) (rejecting motion to dismiss and rejecting a strictly literal interpretation of language nearly identical<sup>3</sup> to Section 102.61(a)(8) as it "can produce only the atmosphere of a tensely litigated law suit in which all sides will be quick to seize upon technical defects in pleadings to gain substantive victories").<sup>4</sup>

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<sup>2</sup> "In this case, the petition does not satisfy the mandatory obligations imposed by Section 102.61(a). The petition does not include a 'statement that the employer declines to recognize the petitioner as the representative within the meaning of Section 9(a).' The Union left Section 7 of the petition completely blank and failed to ever request that the Employer recognize it as the representative of the petitioned for unit."

<sup>3</sup> The language in the Board's rules at the time did not contain the additional provision "or that the labor organization is currently recognized but desires certification under the Act."

<sup>4</sup> "[W]e adhered faithfully to the practice of deciding on the merits any case in which it appeared that a real question concerning representation *existed*, despite the fortuity that a petition might have disclosed faulty, incomplete, inaccurate, or otherwise imperfect information. We found that the Board could only achieve a fair measure of success in performing its obligations by following that policy." *Id.* at 31.

For the reasons discussed above, the Employer has not established that the Petitioner has failed to comply with its obligations, and I am again denying the Employer's Motion to Dismiss.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees whose job assignment is limited to operating the tram at the Employer's facility, excluding all other employees, including office, clerical, professional, guards, and supervisors as defined in the National Labor Relations Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL-CIO.

#### **A. Election Details**

The election will be held on July 7, 2015 from 11:00 AM to 3:00 PM and 8:00 PM to 10:00 PM at the Human Resources Training Room at the Employer's facility.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending June 21, 2015, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an

economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties<sup>5</sup> by **Thursday, July 2, 2015**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

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<sup>5</sup> At hearing, the Petitioner waived the requirement that it receive the voter list 10 days prior to the election.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 30<sup>th</sup> day of June 2015.

*/s/ Cornele A. Overstreet*

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Cornele A. Overstreet, Regional Director



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**Petitioner**

**Case 28-RC-154093**

**AFFIDAVIT OF SERVICE OF: DECISION AND DIRECTION OF ELECTION DATED June 30, 2015**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 30, 2015, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Aria Resort & Casino d/b/a Aria  
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June 30, 2015

Date

Nancy Martinez, Designated Agent of NLRB

Name

/s/ Nancy Martinez

Signature